



**CALIFORNIA SCHOOL FINANCE AUTHORITY
915 CAPITOL MALL, ROOM 101
SACRAMENTO, CA 95814**

**Title 4, Division 15, Article 5,
CALIFORNIA CODE OF REGULATIONS
Charter Access to Bank Loan Enhancement (Charter ABLE) Program**

NOTICE OF PROPOSED RULEMAKING ACTION

NOTICE IS HEREBY GIVEN that the California School Finance Authority (Authority), organized pursuant to Sections 17170 through 17199.6 of the Education Code, proposes to amend the regulations described below after considering all comments, objections, and recommendations regarding the proposed action. Any person interested may present written statements or arguments relevant to the proposed action to the attention of the Contact Person as listed in this Notice no later than Friday, February 27, 2023. The Authority Board, upon its own motion or at the request of any interested party, may thereafter adopt the proposal substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person(s) designated in this Notice as the Contact Person and will be mailed to those persons who submit statements related to this proposal or who have requested notification of any changes to the proposal.

Proposed Regulatory Action

The Authority proposes to adopt Sections 10200.8 through 10200.15 of Title 4, Division 15, Article 5 of the California Code of Regulations as permanent. The regulations implement the Authority's responsibilities related to the Charter Access to Bank Loan Enhancement Program (Charter ABLE Program or Program).

Authority and Reference

Authority: Section 17179 and 17180 of the Education Code. Section 17180(o) allows the Authority to adopt regulations in order to administer the Charter ABLE Program.

Reference: Sections 17173, 17180, 47604, 47604.1, 47604.2, 47605 and 47612.5(e)(1) of Education Code.

Informative Digest/Policy Statement Overview

The Authority was created in 1985 to assist school districts and community college districts in financing school construction projects (Education Code section 17170, et seq.). The Authority is authorized to adopt bylaws for the regulation and conduct of its business, and the Authority is vested with all powers reasonably necessary to carry out its powers and responsibilities (Education Code sections 17179 and 17180).

Charter ABLE Program regulation became effective March 21, 2022 and were established as emergency regulations in the California Code of Regulations in Title 4, Division 15, Article 5. (OAL Regulatory Action N./ 2022-0310-04E).

These emergency regulations were readopted on September 21, 2022 (OAL Regulatory Action No. 2022-0915-01EE), and again on December 19, 2022. (OAL Regulatory Action No. 2022-1209-01EE).

These emergency regulations are set to expire on March 20, 2023. In order to continue the administration of the Charter ABLE Program, the Authority is proposing to make these emergency regulations permanent through OAL's permanent rulemaking process.

The proposed regulations set forth have not changed since their original submission through the emergency rulemaking process. These proposed regulations set the Authority's policies and procedures for administering the Charter ABLE Program, including but not limited to definitions; minimum eligibility requirements; application submission and content requirements; procedures for apportionment of grant funds and appeals; and policies governing grantee obligations, responsibilities, and approval of grant use change.

After conducting an evaluation of any related regulations on this matter, the Authority has concluded that these are the only regulations dealing with the Charter ABLE Program, and therefore, these proposed regulations do not present any inconsistencies or incompatibilities with existing state regulations.

The proposed regulations are summarized below.

Informative Digest

The Authority received a grant award under the U.S. Department of Education's Credit Enhancement for Charter Schools Facilities Program (CFDA #84.354) pursuant to Title V, Part B, Subpart 2 of the Elementary and Secondary Education Act. This grant, awarded in 2019, provides \$20,000,000 for the purpose of funding debt service reserves for the financing of acquisition, renovation, or construction of charter school facilities, or the refinancing of existing charter school facility debt.

In February 2021, the Authority and the US Dept of Ed. (DOE) signed a performance agreement allowing the Authority to use Charter ABLE Program funding to assist public schools with COVID-19 related issues through the ASAP and TRAN programs, respectively. These programs were discontinued in late 2021, and funds were transferred back on December 31, 2021 to the Charter ABLE Program. On February 7, 2022, the Authority's Board approved the emergency regulations at its board meeting. The emergency regulations were adopted on March 21, 2022 and readopted September 21, 2022 and again on December 19, 2022. The proposed regulations are the same as the readopted emergency regulations.

Section 10200.8. Purpose. The purpose of the regulations is set forth as the implementation of the Authority's DOE grant through the establishment of a program to be known as the Charter ABLE Program, intended to provide credit enhancement to facilitate financing of the construction and/or renovation of facilities for California public charter schools.

Section 10200.9. Definitions. Various words and phrases used in the regulations are defined. This is necessary to provide clarity and specificity where words of common usage may have a meaning specific to the Charter ABLE Program. The section also established the Charter ABLE Program Application – Form CSFA 03-22 (rev. March 2022) and is incorporated herein by reference.

Section 10200.10. Applicant Eligibility Criteria. This section sets forth the three conditions that must be met for an applicant to be eligible to apply for an award for Charter ABLE Program funds as well as setting forth the source from which the information will be sought. The regulations clarify that not only must an approved charter be in place and current at the time of application but must remain in place and current through the application review and approval process. In addition, the charter school must be in good standing with its Charter Authorizer and in compliance with the terms of its charter at the time the application is submitted. The regulations clarify that whether the school is in good standing and in compliance with the terms of its charter will be determined based on information obtain from the Charter Authorizer. Finally, to be eligible to apply for an award under the Charter ABLE Program, the school must be established pursuant to Education Code section 47600 et seq. and meet the federal definition of Charter School as set forth in section 5210(1) of the Elementary and Secondary Education Act of 1965 (20 USCA section 7221 (i)), as amended by the No Child Left Behind Act of 2001. This provides predictability and uniform application of Charter ABLE Program rules as well as informing potential applicants and the public of the program standards and the source that will be used to verify applicant good standing and compliance with the terms of its charter.

Section 10200.11. Award Allocation and Eligible Use of Program Funds. This section describes the approved uses of Charter ABLE Program funds and explains how awards will be allocated. Subdivision (a) indicates that the purpose of awards is to fund the primary debt service reserve requirement for debt associated with the renovation and/or construction of charter school facilities. The limit for awards is set as up to a maximum annual debt service per Financing as defined in Section 10200.9, with an award dollar limit of \$2 million. This provides specificity regarding both the purpose of and amount of awards.

Subdivisions (b)-(d) describe award allocation. Awards shall be held in trust and only released to awardees upon the Authority's or an Authority's approved trustee's approval. Conditions for release will be determined by the Authority, in collaboration with all lending parties, prior to closing of the financing. When Program funds are no longer needed for the authorized purposes, they shall be released and returned to the Authority. If the awardee does not use the Program funds by closing the financing within six months of approval, the award will expire. Additional time may be granted on a case-by-case basis. These provisions are necessary to identify the responsible parties and relevant time frame for award allocation.

Subdivision (e) establishes an application filing fee for the Program to offset staff time devoted to eligibility and application review.

Section 10200.12. Application Review and Evaluation Criteria. This section describes the

availability of the Program application and sets out the criteria used to determine awards. Subdivision (a) establishes that applications will be made available to the extent that funding and appropriations are available, and will be provided on a first come, first served basis. The application period will close when funding is no longer available. This provision is necessary to provide notice to potential applicants that the application period is dependent upon the availability of funds and that, assuming Program criteria are satisfied, awards will be made on a first come, first served basis.

Subdivision (b) describes the criteria by which applications will be evaluated and awards made and provides that applicants must meet at least one criterion but will receive increasing preference for each criteria met. The criteria are either: 1) location in a district or county where at least 50% of students do not meet the state standard for proficiency in either math or language on the state assessment; 2) location in a district or county with more than 50% of the student population eligible for free or reduced-price lunch; or 3) more than 50% of current or projected enrollment are eligible for free or reduced-price lunch. These criteria are necessary to meet the program goal of providing preference to schools serving communities and families in need. This provision provides clarity in how the Authority intends to identify such schools.

Section 10200.13. Content of Application. This section sets forth the items that must be submitted to the Authority as part of an application for Program funds. This list is necessary to detail the specific information and documents required as part of a Program application, the relevant time frame for certain documents, and the reservation that the Authority may request any additional information deemed necessary to evaluate the application. This provision is necessary to provide consistency, clarity, and predictability for Program applicants.

Section 10200.14. Audits and Conflicts of Interest. Subdivision (a) reserves the ability for the Authority to conduct or require audits to ensure compliance with the requirements and terms of the Program, the related financing program, and the regulations, and requires awardees to retain documentation and financial data for three years after the certification of completion and repayment of debt or three years after the Program funds are no longer held in reserve, whichever is longer. These requirements are necessary to put awardees on notice of the potential for audit and to notify awardees of required document retention requirements.

Subdivision (b) establishes that the U.S. Department of Education conflict of interest rules apply to the Program. This provision is necessary to provide clarity and specificity to awardees and to assure Californians that the Program will be administered free from apparent or actual conflicts of interest.

Subdivision (c) establishes that the Program will be administered consistent with the federal post-award procurement requirements of 2 CFR 200.317 through 2 CFR 200.327 requiring federal grant awardees to develop written procurement procedures and conduct procurement transactions in a manner that provides open and free competition. In addition, this rule prevents any employee, officer, or agent of an awardee from participating in the selection, award, or administration of any contract paid by federal funds

if a real or apparent conflict of interests exists. This provision is necessary to provide clarity and specificity to awardees and to assure Californians that the Program will be administered free from apparent or actual conflicts of interest.

Subdivision (d) reserves the right of the Authority to conduct site visits to any school facility or project receiving Program funds. This provision is necessary to provide notice to awardees and for specificity and clarity regarding Program administration.

Subdivision (e) requires awardees to routinely submit documentation of continued eligibility on at least an annual basis. This provisions in necessary to provide notice to awardees of Program requirements and to provide specificity and clarity regarding Program administration.

Subdivision (f) requires awardees to comply with all State and Federal requirements throughout the award period. This provision is necessary to establish that awardees are required to comply with both State and Federal requirements for the entire award period. The regulation provides clarity and specificity regarding Program expectations.

Section 10200.15. Funding Contingency. This section provides that the release of Program funds is dependent upon the execution of a performance agreement between the Authority and the U.S. Department of Education and that the Program itself is contingent upon the receipt and availability of funds. This provision is necessary to describe the funding contingency of the Program and to provide clarity and predictability.

Incorporated by Reference Form

Charter ABLE Program Application – Form CSFA 03-22 (rev. March 2022)

Citations for Proposed Regulations Mandated by Federal Laws or Regulations

Proposed regulation Section 10200.14 references sections of the Code of Federal Regulations related to requirements prescribed through the United States' Department of Education as well as general conflict of interest compliance for federal grants. Those sections are listed in proposed Section 10200.14 and are cited below.

- Code of Federal Regulations – Title 34, Subtitle A, Part 75, Subpart E - §75.525(a)
- Code of Federal Regulations – Title 34, Subtitle A, Part 75, Subpart E - §75.525(b)
- Code of Federal Regulations – Title 2, Subtitle A, Chapter II, Part 20, Subpart D (§ 200.318 - §200.327)

The full text of the federal regulations referenced above are found in the Code of Federal Regulations, which is available online at <https://www.ecfr.gov/>.

Other Matters Prescribed by Statutes Applicable to the Specific State Agency or to any Specific Regulation or Class of Regulations

No other matters prescribed by statute are applicable to the Authority or to any specific regulation or class of regulations pursuant to Section 11346.5(a) (4) of the California Government Code pertaining to the proposed regulations or the Authority.

Mandate on Local Agencies or School Districts

The Authority has determined the proposed regulations do not impose a mandate on local agencies or school districts.

Evaluation of Inconsistency and Incompatibility

The Authority performed a search in the California Code of Regulations and the proposed regulations are neither inconsistent nor incompatible with existing regulation.

Fiscal Impact

The Authority has instituted an application filing fee to offset costs associated with Authority staff reviewing applications and various federal and state reporting requirements for the grant program. Application review includes, but is not limited to, reviewing and verifying application content, ensuring program eligibility, preparing grant agreements, staff reports and resolutions, liaising with program attorneys and financing team members, ensuring grant funds are disbursed to the trustee, and closing document review associated with the financing. Reporting requirements include, but are not limited to, staff reports, multiple meetings with federal program officials, liaising with program attorneys and borrow trustees, balance confirmations, and account reconciliation. The \$1,000 fee was determined to be adequate enough to cover costs related to staff time, while not being cost prohibitive for applicants.

Initial Determination Regarding any Significant, Statewide Adverse Economic Impact Directly Affecting Business

The Authority has made an initial determination that the proposed regulations will not have any significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

Effect on Small Businesses

The Authority has determined that the adoption of the proposed regulations will not affect small business. The Charter ABLE Program is a voluntary grant program available to charter schools to assist in the costs of charter school facilities.

Assessment of Effect on Jobs and Business Expansion, Elimination or Creation

Adoption of these regulations will not create or eliminate jobs within California, nor create new businesses or eliminate existing businesses within California. The proposed regulations could likely impact the expansion of businesses currently doing business within the State of California. This program will enhance conduit financings for charter school facilities. These facilities are often

an expansion of the associated charter school organizations to serve more students. It should be noted that not all charter school facility related financings are expansions. Some financings are replacement facilities, renovations, or site improvements.

Assessment of Effect to the Health and Welfare of California Residents, Worker Safety, and the State's Environment

The purpose of the program and proposed regulations is to set forth administrative criteria and requirements for administering this grant program. The Authority do not expect any anticipated benefits to worker safety or the State's environment. However, while each funding is different, funding for facilities may allow schools to free up assets potentially allowing actions resulting in improved worker safety. Additionally, there may be a positive effect on the welfare of some California residents. As the intent of the program is to enhance financings related to charter school facilities, the Program and its proposed regulations have the potential to directly benefit the welfare of students and their related communities.

Cost Impact on Housing

The proposed regulations will not have any effect on housing costs.

Reasonable Alternatives

In accordance with Government Code section 11346.5(a)(13), the Authority must determine that no reasonable alternative to the regulations considered by the Authority or that has otherwise been identified and brought to the attention of the Authority, would be more effective in carrying out the purpose for which the regulations are proposed or would be as effective and less burdensome to affected private persons than the regulations, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law. The Authority invites interested persons to present statements with respect to alternatives to the proposed regulations during the written comment period.

Agency Contact Person(s)

Written comments, inquiries, and any questions regarding the substance of the proposed regulations shall be submitted or directed to:

Katrina Johantgen, Executive Director,
California School Finance Authority at:

300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
(213) 620-4608

or

915 Capitol Mall, Room 101
Sacramento, CA 95814
(916) 651-7710

or

kjohantgen@treasurer.ca.gov

or

csfa@treasurer.ca.gov

The following person is designated as a backup Contact Person for inquiries only regarding the proposed regulations:

Ryan Storey
300 S. Spring Street, Suite 8500
Los Angeles, CA 90013
(213) 620-4608

Written Comment Period

Any interested person, or their authorized representative, may submit written comments relevant to the proposed regulations to the Authority. The written comment period on the regulations will end on Friday, February 27, 2023. All comments to be considered by the Authority must be submitted in writing to the Agency Contact Person identified in this Notice by that time. In the event that changes are made to the proposed regulations during the written comment period, the Authority will also accept additional written comments limited to any changed or modified regulations for 15 calendar days after the date on which such regulations, as changed or modified, are made available to the public pursuant to Title 1, Chapter 1, Section 44 of the California Code of Regulations. Such additional written comments should be addressed to the Agency Contact Person identified in this Notice.

Availability of Initial Statement of Reasons, Rulemaking File and Express Terms of Proposed Regulations

The Authority has established a rulemaking file for this regulatory action, which contains those items required by law. The file is available for inspection at the Authority's office at 915 Capitol Mall, Suite 101, Sacramento, California, during normal business hours. As of the date this Notice is published in the Notice Register, the rulemaking file consists of this Notice, the Initial Statement of Reasons, and the proposed text of the Regulations. Copies of these items are available upon request, from the Agency Contact Person designated in this Notice. The Sacramento address will

also be the location for inspection of the rulemaking file and any other public records, including reports, documentation and other materials related to this proposed regulatory action. In addition, the rulemaking file, including the Initial Statement of Reasons and the proposed text, may be viewed on the Authority's Web site at www.treasurer.ca.gov/csfa.

Public Hearing

No public hearing regarding the proposed regulations has been scheduled. Anyone wishing a public hearing must submit a request in writing, pursuant to Section 11346.8 of the Government Code, to the Authority at least 15 days before the end of the written comment period. Such request should be addressed to the Agency Contact Person identified in this Notice and should specify the regulations for which the hearing is being requested.

15-Day Availability of Changed or Modified Text

After the written comment period ends and following a public hearing, if any is requested, the Authority may adopt the proposed regulations substantially as described in this Notice, without further notice. If the Authority makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public (including through the Authority's website described above) for at least fifteen (15) calendar days before the Authority adopts the proposed regulations, as modified. Inquiries about and requests for written copies of any changed or modified regulations should be addressed to the Agency Contact Person identified in this Notice.

Availability of Final Statement of Reasons

The Authority is required to prepare a Final Statement of Reasons pursuant to Government Code section 11346.9. Once the Authority has prepared a Final Statement of Reasons, a copy will be made available to anyone who requests a copy and will be available on the Authority's website described above. Written requests for copies should be addressed to the Agency Contact Person identified in this Notice.